

**Letter of Findings: 04-20160113P  
Gross Retail Tax  
For the Year 2015**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Indiana Electric Cooperative was entitled to an abatement of a penalty assessed on the late payment of sales tax; the failure to remit the proper amount of tax was not due to willful neglect, and the Electric Cooperative exercised ordinary business care when it promptly corrected its initial error.

**ISSUE**

**I. Administration - Late Payment Penalty.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that the Department should exercise its discretion to abate a ten-percent late payment penalty because its failure to timely remit sales tax was not attributable to willful neglect.

**STATEMENT OF FACTS**

Taxpayer is an Indiana rural electric cooperative. In January 2016, Taxpayer failed to remit the correct amount of sales tax collected from its customers. The Indiana Department of Revenue ("Department") assessed Taxpayer a ten-percent late payment penalty. Taxpayer disagreed with the penalty and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

**ISSUE**

**I. Administration - Late Payment Penalty.**

**DISCUSSION**

Taxpayer regularly collects and remits Indiana sales tax. On January 19, Taxpayer filed a form ST-103 reporting and remitting sales tax. The return was due January 20. Taxpayer underpaid the amount of tax due. Taxpayer explains that its failure to pay the amount due was due to a clerical error. According to Taxpayer, its employee "incorrectly entered the final billing cycle information into a spreadsheet that calculates the amount of sales tax due causing the additional tax due from that billing cycle to be subtracted from the total amount due rather than adding to it." Taxpayer further explains that it discovered the error on the 21st of the month, contacted the Department, and submitted the additional amount due later that same day.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined

on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation [45 IAC 15-11-2](#)(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . ."

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the negligence penalty - is presumptively valid.

Taxpayer plainly failed to pay the total amount due January 20. However, there is no evidence that Taxpayer's failure to do so constituted "willful neglect." Rather there is evidence that Taxpayer acted in good faith and promptly corrected the error within hours after detecting that mistake. Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that the ten-percent negligence penalty should be abated.

### **FINDING**

Taxpayer's protest is sustained.

*Posted: 09/28/2016 by Legislative Services Agency*

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